No. 80-2078

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In the Supreme Court of the United States

OCTOBER TERM, 1980

DAMES & MOORE, A PARTNERSHIP, PETITIONER

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE FEDERAL RESPONDENTS

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1. Petitioner challenges two distinct actions by the President in this case: (1) the ordering of the transfer of Iranian assets subject to the jurisdiction of the United States, and (2) the provision for the settlement of claims against Iran by means of their presentation to the Iran-United States Claims Tribunal. Although both of these measures were taken in connection with the Agreement with Iran, they implicate quite different powers of the President.

As we explain in our opening brief (Govt. Br. 28-29), the President had the power under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. (Supp. III) 1701 *et seq.*, to direct the return of frozen Iranian property to Iran solely in order to obtain the release of the

hostages and resolve the crisis with Iran, without making any provision for settlement of the claims of United States nationals. Thus, the validity of the Presidential order to transfer assets which are subject to judicial orders obtained by petitioner does not depend on whether petitioner's claim against the Iranian defendants is subject to the jurisdiction of the Claims Tribunal and is thereby settled by the Agreement. See, *e.g.*, *American Bell Int'l, Inc.* v. *Islamic Republic of Iran*, No. 80-321 (D.D.C. June 11, 1981), cert. before judgment denied, No. 80-2111 (June 22, 1981). Nor does it depend on whether the President even had authority to settle claims of any American nationals. Conversely, the President's power under the Constitution, the Hostage Act (22 U.S.C. 1732), and the 1955 Treaty with Iran,[1] to provide for the settlement and discharge of the claims of American nationals against Iran through submission to arbitration does not depend on whether he also has the authority under IEEPA to direct the transfer of blocked Iranian property, up to $1 billion of which will be deposited in a security account to fund awards by the Tribunal in favor of American claimants.

2. Petitioner concedes (Pet. Br. 18) that the President has authority to settle the claims of United States nationals against a foreign government. See Govt. Br. 40-50. The entire burden of its argument on the claims settlement issue (see Pet. Br. 9-18, 20-21) is that the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. 1602 *et seq.*, implicitly carves out an exception to this broad authority in the case of claims for which that Act permits a suit against the foreign government. For the reasons given in our opening brief (Govt. Br. 56-63), however, the FSIA is wholly irrelevant to the claims settlement issue.

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[1]Treaty of Amity, Economic Relations, and Consular Rights Between the United States and Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. No. 3853.

The pertinent provisions of that Act (28 U.S.C. 1604-1607) deal solely with issues of immunity (H.R. Rep. No. 94-1487, 94th Cong., 2d Sess. 20 (1976); S. Rep. No. 94-1310, 94th Cong., 2d Sess. 19 (1976); see also *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir. May 22, 1981), at 20) and confer jurisdiction on the district courts of in personam actions against a foreign sovereign whenever the sovereign is not entitled to immunity (28 U.S.C. 1330(a)).[2] The settlement by the Executive of a claim on which a claimant has filed suit against a foreign government no more interferes with the *jurisdiction* of the court or confers an *immunity* to that jurisdiction—the subjects addressed by the FSIA—than would a settlement entered into by the claimant himself. For example, if petitioner entered into an out-of-court agreement with the Iranian defendants settling its claims, that settlement would furnish a basis for the Iranian defendants to assert the affirmative defense of accord and satisfaction (Fed. R. Civ. P. 8(c)), not a lack of subject matter jurisdiction under 28 U.S.C. 1330(a) because of an immunity to suit. By the same token, if the President settles the claim pursuant to his constitutional or other authority, the Iranian defendants presumably could assert a similar defense (cf. *Heckman* v. *United States*, 224 U.S. 413, 444-446 (1912)) or one based upon the failure to state a claim upon which relief could be granted (Fed. R. Civ. P. 12(b)(6); *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, Nos. 80-1779, 80-1891 (D.C. Cir. June 5, 1981), slip op. 23); they could not, however, obtain a dismissal for lack of jurisdiction because of a supposed immunity to the jurisdiction of the courts.

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[2]The legislative history of the FSIA cited by petitioner (Pet. Br. 10-15) refers exclusively to the issue of a foreign government's immunity to suit and the State Department's previous role in making "suggestions of immunity" to the courts (*id.* at 12 & n.10). Petitioner still has cited no reference suggesting a congressional intent in the FSIA to abrogate the established practice of Executive claims settlement.

Moreover, as relevant here, the FSIA did not represent a break with the past with respect to foreign sovereign immunity; it merely codified the previously extant restrictive theory of sovereign immunity under which a foreign government is generally subject to suit for its commercial and other private acts. See H.R. Rep. No. 94-1487, *supra*, at 7. That theory of sovereign immunity had been adopted by the State Department itself in 1952. See *Alfred Dunhill of London, Inc.* v. *Cuba*, 425 U.S. 682, 698-699, 711-715 (1976). Yet since 1952, as the District of Columbia Circuit observed, the Executive has entered into at least ten lump sum settlement agreements with other nations.. *American Int'l Group, Inc.* v. *Islamic Republic of Iran, supra*, slip op. 30. Significantly, three of those agreements settled commercial contract claims, on which the foreign government may not have been immune to suit in this country. See United States-Hungary Claims Settlement, Mar. 6, 1973, Art. 2(2), 24 U.S.T. 552, T.I.A.S. No. 7569; United States-Bulgaria Claims Settlement, July 2, 1963, Art. I(1)(c), 14 U.S.T. 969, T.I.A.S. No. 5378; United States-Rumania Claims Settlement, Mar. 30, 1960, Art. I(1)(c), 11 U.S.T. 317, T.I.A.S. No. 4451. If these settlements of commercial contract claims were not inconsistent with the restrictive theory of sovereign immunity adopted by the State Department in 1952, there is no reason to believe that Executive settlement of commercial claims became inconsistent with that same theory when it was codified in the FSIA. Similarly, the *Restatement*, which incorporates the restrictive theory of sovereign immunity with respect to commercial activities (*Restatement (Second) of Foreign Relations Law* § 69 (1965)), explicitly notes that the Department of State will espouse and settle contract claims in appropriate circumstances even without the claimant's consent (*id.* at § 212 Reporters' Note, § 213. The drafters of the *Restatement* therefore apparently saw no inconsistency between the proposition that foreign governments are subject to suit

on claims arising out of their commercial activities and the proposition that the President may settle the same claims. Accordingly, there is no reason to believe that Congress perceived such an inconsistency when it enacted the FSIA.[3]

Finally, the FSIA subjects a foreign sovereign to suit on more than commercial contract claims. For example, 28 U.S.C. 1605(a)(3) provides that a foreign sovereign is not immune from suit in the United States on certain expropriation claims.[4] Expropriation claims have frequently been the subject of claims settlement agreements. Yet under petitioner's argument that claims may not be settled by the Executive where they are (or perhaps may be) the subject of a suit filed under the FSIA, the Executive would be required to exclude certain expropriation claims from claims settlement agreements as well. See also 28 U.S.C. 1605(a)(1) (permitting suits where the foreign government has waived immunity). As we noted in our opening brief (Govt. Br. 59 n.55), such an approach would pose an insurmountable barrier to claims settlement by the Executive, which would not be in a position to make the complex legal and factual

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[3]The congressional reports on the FSIA also reflect an intent to ensure that the practice in the United States with respect to immunity is in line with that in other nations. H.R. Rep. No. 94-1487, *supra*, at 7; S. Rep. No. 94-1310, *supra*, at 7. The statutory purpose of bringing the United States into line with the international community would not be served by a construction of the FSIA that would disable the United States government from settling the claims of its nationals through negotiations with another nation, especially in circumstances as compelling as the Iranian crisis.

[4]28 U.S.C. 1605(a)(3) provides that a foreign state shall not be immune in any case in which rights in property taken in violation of international law are in issue and that property (or property exchanged for it) is present in the United States in connection with commercial activity or that property is owned or operated by an instrumentality of the foreign state that is engaged in commercial activity in the United States.

judgments necessary to determine whether each of a multitude of claims was one for which a suit would lie under the FSIA and which was therefore not subject to settlement between nations.

3. Petitioner contends (Pet. Br. 23-33) that IEEPA does not authorize the President to provide for the transfer of blocked Iranian assets to Iran and to the security account intended to fund awards by the Claims Tribunal. In petitioner's view, the power to allow foreign assets to leave the country is an "awesome" one (Pet. Br. 24) that defeats the rights of American creditors.

The language of IEEPA is indeed "sweeping and unqualified" (*Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority, supra,* at 9) with respect to the powers the President may exercise over blocked assets of a foreign country. But the legal principle that explains how those powers may affect petitioner and other claimants who obtained orders of attachment against Iranian property after the President's November 14, 1979, blocking order is quite simple. By issuing the blocking order, the President obtained, in effect, a congressionally authorized "lien" or right in those assets in order to enable him to deal with the "unusual and extraordinary threat * * * to the national security, foreign policy, or economy of the United States" (50 U.S.C. (Supp. III) 1701(a)) that was created by the hostage crisis. Petitioner and other individual claimants who obtained orders of attachment against that property after November 14, 1979, were thereby rendered, in effect, junior creditors whose interest in Iranian property was necessarily subordinate to and contingent upon the exercise of the President's prior and paramount authority to control the property in the national interest and for the benefit of claimants generally, rather than for the benefit of the relatively few individual claimants who happened to have filed suit and obtained attachments. Petitioner therefore cannot

complain of the President's exercise of the very powers Congress conferred on him.

Petitioner was on notice of the contingent and subordinate nature of its interest when it filed suit, by virtue of regulations providing that "any attachment * * * is null and void" with respect to Iranian property "[u]nless licensed or authorized" under the regulations (31 C.F.R. 535.203(e) (1980)) and making clear that the general license for pre-judgment attachments and other proceedings (31 C.F.R. 535.418, 535.504 (1980)) "may be * * * revoked at any time" (31 C.F.R. 535.805 (1980)). When that general license for pre-judgment attachments was revoked, the legal basis for the attachments was eliminated and the attachments were rendered "null and void."[5] Moreover, as we explain in our opening brief (Govt. Br. 28-38), past decisions of this Court make clear that a pre-judgment attachment of frozen assets in a suit against the foreign debtor does not restrict the President in his control over the property in any event.

In petitioner's view, however, IEEPA does not allow the President "permanently to dispose" of foreign property out

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[5]Petitioner argues (Pet. Br. 37-40) that these regulations meant only that no *new* attachments could be obtained after the license was revoked, but that attachments that were obtained while the license was in effect would remain valid. Such an interpretation is inconsistent with the very concept of a license, which ordinarily allows the use of property only at the sufferance of the licensor, without creating any vested interest in the property that survives the revocation of the privilege. Cf. *De Haro* v. *United States*, 72 U.S. (5 Wall.) 599, 627 (1867). Because a license by definition may be revoked at any time, petitioner's construction renders the explicit revocability provision redundant. See *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979). Furthermore, petitioner's interpretation is entirely inconsistent with the purpose of the assets control regulations, which is to leave control of the assets by the President unfettered by the creation of interests in property, by court order or otherwise. See *Propper* v. *Clark*, 337 U.S. 472 (1949).

of the country (Pet. Br. 28).[6] This argument is answered by the very language of IEEPA itself. The statute authorizes the President to "regulate" or "direct and compel" the "transfer, withdrawal, transportation, * * * or exportation of * * * any property in which [a] foreign country * * * has any interest * * * by any person, or with respect to any property, subject to the jurisdiction of the United States" (50 U.S.C. (Supp. III) 1702(a)(1)(B)). This language plainly authorizes the President to license a foreign country to "withdraw" or "export" the property it has in the United States or, as here, to bring about the same result by "directing" and "compelling" "any person" in possession of Iranian property to "transfer," "transport," and "export" it so that it will be placed in the security account or in the custody and control of Iran, the country to which it belongs. See McLaughlin & Teclaff, *The Iranian Hostage Agreements: A Legal Analysis*, 4 Fordham Int'l L.J. 223, 235 (1981).

Petitioner has pointed to nothing in IEEPA or its legislative history to suggest that Congress did not intend these words to mean exactly what they say. To the contrary, the House Report emphasizes that the power granted in IEEPA is "sufficiently broad and flexible to enable the President to respond as appropriate and necessary to unforeseen contingencies" (H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 10 (1977)). Here, the President determined that the transfers of Iranian property contemplated by the Agreement with Iran

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[6]Petitioner argues (Pet. Br. 27-28) that this supposed "permanent" disposition of the assets conflicts with IEEPA's purpose of allowing only temporary freezing of foreign assets. But petitioner loses sight of the fact that the President's withholding of the assets from *Iran*, the owner of the property, *was* temporary in nature, lasting only so long as necessary to accomplish the objectives of the blocking order.

were an "appropriate and necessary" response to the "unforeseen contingencies" of the crisis following the seizure of the American hostages, because they implemented the Agreement providing for the release of the hostages and resolution of claims of United States nationals and prepared the way "to begin the process of normalization of relations between the United States and Iran" (Executive Order Nos. 12279, 12280, 12281 (46 Fed. Reg. 7919, 7921, 7923 (1981)); Pet. App. 43, 46, 49).

Petitioner takes a narrower view of the statute's purposes, however, contending that the President cannot dispose of the assets in a way that affects its attachments and, therefore, its ability to recover on its claim in district court. It is true that the blocking powers authorized by IEEPA were intended in part to protect American claimants. See Govt. Br. 29-30. But Congress expected that this would be accomplished by the *President*, through a lump sum or other form of *settlement* of claims generally. See, *e.g.*, H.R. Rep. No. 95-459, *supra*, at 17. IEEPA was not intended to be a mere supplement to whatever powers of attachment individual claimants might have obtained in United States courts, as petitioner would have it.

If attachments obtained by claimants in the United States were held to prevent the President from transferring or freeing up blocked assets, they would prevent the President from resolving the crisis that first led to the blocking order, as IEEPA obviously contemplates. In the particular circumstances of this case, such judicial restraints would prevent the transfer of the $1 billion in bank-held assets that are to be placed in the security account to pay awards by the Claims Tribunal. And if the remainder of Iranian assets that are subject to attachment could not be returned to Iran in accordance with the terms of the Agreement, there is every likelihood that Iran would not make any additional payments into the security account to fund awards by the

Tribunal. In that event, the mechanism established by the President for the settlement of claims of United States nationals generally would be rendered ineffective. Such a result, reached for the benefit of those relatively few claimants who obtained pre-judgment attachments,[7] would plainly conflict with the clear congressional purpose in enacting IEEPA that nothing in the Act was intended "to impede the *settlement* of claims of U.S. citizens against foreign countries" (S. Rep. No. 95-466, 95th Cong., 1st Sess. 6 (1977); emphasis added).[8]

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[7]The passages in the IEEPA hearing and markup transcripts cited by petitioner (Pet. Br. 26 n.27) do not support its assertion that Congress intended to permit the President to freeze assets and negotiate a settlement *only* where the claimants could not sue the foreign government in United States courts.

[8]We have answered petitioner's argument (Pet. Br. 25-27) that, by virtue of Sections 9 and 34 of the Trading with the Enemy Act (TWEA), 50 U.S.C. app. 9 and 34, the President would have been prohibited under the TWEA from transferring frozen assets overseas rather than satisfying the claims of particular American claimants. See Govt. Br. 36-38. Those sections provided a right for claimants to recover only out of assets that were vested in the federal government—*i.e.*, foreign assets to which the United States had taken *title*. There is no comparable right under the TWEA to recover out of assets that were only frozen or blocked, as is the case with Iranian assets. See *Markham* v. *Cabell*, 326 U.S. 404, 409-410 (1945). Congress declined to permit the President to *vest* foreign assets under IEEPA. This omission obviously was not meant to assist American claimants, because they are thereby deprived of the benefits of Sections 9 and 34; the omission was instead intended for the protection of the foreign property owner whose property might be taken over by the federal government. Thus, the deletion of the vesting power cuts strongly against recognizing a right in petitioner, through its post-blocking attachments, to prevent the disposition of foreign assets in the manner agreed to by their owner. See McLaughlin & Teclaff, *supra*, 4 Fordham Int'l L.J. at 236.

4.a. Petitioner contends (Pet. Br. 33-43) that the President's Executive Orders requiring the transfer of property notwithstanding the orders of attachment and other judicial orders petitioner obtained constitute a taking of property without just compensation and should, for that reason, be enjoined. But these attachments were acquired pursuant to a license that was expressly made revocable at any time, and all such judicial orders were in any event subordinate to the President's previously invoked power to direct the transfer of assets pursuant to IEEPA. See Govt. Br. 36 n.29, 64; *Markham* v. *Cabell, supra*; see also note 5, *supra*. Thus, petitioner had no property interest resulting from these judicial orders that could be asserted against the federal government, and the President's directing the transfer of the property therefore does not constitute a taking of property requiring the payment of just compensation.[9]

b. Petitioner concedes (Pet. Br. 34 n.32) that any taking argument with respect to the President's exercise of his distinct power to settle claims of United States nationals "may not yet be ripe for review" because it has not yet presented its claim to the Tribunal and therefore does not know how that claim will be received by the Tribunal.[10] See

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[9]Petitioner also contends (Pet. Br. 34, 36) that it is entitled to just compensation because the President has "nullified" the judgment petitioner obtained against the Government of Iran and AEOI. However, Executive Order No. 12294 (46 Fed. Reg. 14111 (Feb. 26, 1981)) does not purport to "nullify" petitioner's judgment; that order merely *suspends* the domestic effect of claims that may be submitted to the Claims Tribunal. Cf. *American Int'l Group, Inc.* v. *Islamic Republic of Iran, supra*, slip op 32-34. See also Govt. Br. 55-56 & n.52.

[10]Petitioner states (Pet. Br. 4) that it is "highly uncertain" whether its claim against the Iranian defendants is within the jurisdiction of the Claims Tribunal, because that jurisdiction does not extend to "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts" (Decl. II, Art. II; Pet. App. 31). Petitioner's contract provides that if a dispute between the parties cannot be

also *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority, supra*, at 23-24; *American Int'l Group, Inc.* v. *Islamic Republic of Iran, supra*, slip op. 34-38. We agree with petitioner that this aspect of the taking issue need not be considered here. Petitioner's suit against the Iranian defendants in California has not been dismissed, thereby *terminating* its cause of action in United States courts. The claim underlying that suit has only been *suspended*, and this suspension will in turn require only a stay of judicial proceedings pending presentation of the claim to arbitration. Thus, there can be no argument at this stage that petitioner's property has been taken. There will be time enough to consider a taking argument if the district court eventually

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resolved through discussions, the dispute shall be submitted to conciliation by three conciliators, one to be appointed by each party and the third to be appointed by an agency of the Government of Iran. If either party does not accept the decision of the conciliators, the contract provides that "the matter shall be decided finally by resort to the courts of Iran" (Pet. Br. 4 n.2).

The United States has taken the position that a clause giving Iranian courts jurisdiction over disputes arising under the contract may not be "binding" within the meaning of the clause excluding claims arising under certain contracts from the Tribunal's jurisdiction, because circumstances have so changed in Iran that enforcement of the provision would be inconsistent with the parties' intent when they entered into the contract. See *Iranian Asset Settlement: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 97th Cong., 1st Sess. 68 (1981). Under the Agreement, the Tribunal is to decide cases on the "basis of respect for law, * * * taking into account relevant usages of the trade, contract provisions and changed circumstances" (Decl. II, Art. V; Pet. App. 33). The reference to "changed circumstances" in Article V was included for the specific purpose of bringing the changed circumstances doctrine into play with respect to forum clauses. *Hearing, supra*, at 68. In addition, the government has taken the position that, even if forum clauses are "binding" for purposes of the Agreement, clauses such as the one in petitioner's contract that provide for arbitration or conciliation prior to resort to the courts of Iran do not relate to disputes "within the *sole* jurisdiction of the competent Iranian courts" for purposes of the exclusionary clause in Declaration II, Article II (emphasis added).

orders petitioner's suit against the Iranian defendants dismissed following a ruling by the Claims Tribunal on the merits of petitioner's claim—assuming, of course, that petitioner would be dissatisfied with the award and would oppose the order of dismissal.[11]

There would, moreover, be a host of factors to be taken into account in considering the taking issue, many of which are necessarily speculative at the present time. First, of course, is the question whether there could ever be a taking of property for purposes of the Just Compensation Clause resulting from the United States' settlement of a claim against a foreign government, in view of the established doctrine that claims taken up by the United States belong to the United States. See Govt. Br. 49; see also *United States* v. *The Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801); *Great Western Insurance Co.* v. *United States*, 19 Ct. Cl. 206, 217-218; aff'd on other grounds, 112 U.S. 193 (1884); *Arts Gloves, Inc.* v. *United States*, 420 F. 2d 1386 (Ct. Cl. 1970).[12]

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[11]Thus, this is not a case that will lead inexorably to a final conveyance of property without an opportunity for prior judicial review to consider the availability of a Tucker Act remedy. Compare *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 126-127, 138-141 (1974). In any event, an injunction should not be entered to prevent the implementation of an Executive Agreement of the President in circumstances such as this on the basis of mere speculation that the remedies provided will not be adequate in a few individual cases.

[12]*Gray* v. *United States*, 21 Ct. Cl. 340 (1886), does not indicate that there would be a compensable claim. Unlike the present situation, there the court found a taking because the American claims were valid, would have been honored by the French, and were released in full by the United States. See *Aris Gloves, Inc.* v. *United States*, *supra*, 420 F. 2d at 1396-1397 (Nichols, J., concurring). In the present case, the Executive has not *renounced* petitioners claim in a similar fashion. Moreover, *Gray* was "strictly an advisory opinion [for Congress] which was not binding upon either of the parties and cannot be binding upon subsequent courts" (420 F. 2d at 1393). As this Court said of *Gray*, "[w]e think that payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace and not of right." *Blagge* v. *Balch*, 162 U.S. 439, 457 (1896).

Second, assuming that a taking could be found in some such circumstances, the appropriate test in a situation involving an en bloc settlement of claims, we submit, should be whether, under the circumstances, the settlement provided for a reasonable recovery (or procedure for recovery) for the claimants as a group (cf. *United States* v. *Sioux Nation of Indians*, No. 79-639 (June 30, 1980), slip op. 35-50), not whether any particular claimant would have received more in United States courts than he did in a lump sum settlement or through an arbitration mechanism. Indeed, any other rule would perhaps end the long-standing practice of en bloc claims settlement by the Executive.

Third, if it were necessary to focus on the effects of a settlement on each individual claim comprised therein, a court considering a taking claim would be required to conduct a complex trial to determine whether the value received in settlement was in fact less than would have been received in domestic litigation. This would in turn depend on a variety of factors, many of which are unrelated to the merits of the particular contract, expropriation, or other claim that had been settled.[13]

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[13]Thus, in order to prove a taking of property in the context of the Iranian Agreement, a claimant would have to demonstrate some or all of the following: (1) that its underlying claim is meritorious; (2) that the claim would have been decided by an American court notwithstanding such defenses as sovereign immunity, act of state, lack of sufficient contacts for in personam jurisdiction, or perhaps an Iranian forum clause; (3) that the claimant could have executed on a domestic judgment against Iranian property that would have remained in this country even absent the President's blocking order; (4) that the Tribunal's award was less than that a domestic court would have rendered; (5) that the claimant could not recover on an award from the Tribunal either from the $1 billion Security Account or the funds used to replenish and maintain that account at a minimum of $500 million; (6) that the claimant could not satisfy any Tribunal award in the courts of other nations, even those who are a party to the Convention on Recognition and Enforcement of Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997; and (7) that it award would not be satisfied out of funds received by the United States as damages if Iran should default under the Agreement.

Finally, there is the question of what would constitute just compensation for the settlement of an international claim for less than its estimated value in domestic courts. Cf. *United States* v. *Fuller*, 409 U.S. 488, 490 (1973).

These issues obviously are better left for resolution in the case of a particular claimant who can demonstrate a concrete effect on his financial position. *Hodel* v. *Virginia Surface Mining & Reclamation Association*, Nos. 79-1538, 79-1596 (June 15, 1981), slip op. 26-31.

For the foregoing reasons and the additional reasons stated in our opening brief, it is respectfully submitted that the judgment of the district court should be affirmed.

WADE H. MCCREE, JR.
Solicitor General

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